IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE
APPEAL AGAINST ORDER NO. 436 OF 2007
IN
NOTICE OF MOTION NO. 1472 OF 2007

M/s.Sanyam Realtors Pvt.Ltd. .... APPELLANT
V/S.
Shri Shyamji Bhagirathi Yadav .... RESPONDENT

Mr.P.S. Dani i/b.R.S.Chaube for the appellant
Mr.A.G.Damte i/b.M/s.Ravindra Parekh & Co. for respondent no.1.

CORAM : A.P.DESHPANDE, J.
DATE : 8TH JUNE, 2007.

P.C. :-

1. By consent of parties, taken up for final hearing.

2. The appellant is the original defendant no.1, whereas the respondent no.1 herein is the original plaintiff and the second respondent is the original defendant no.1. The plaintiff brought the suit against the appellant bearing suit no. 2849/2006 and in the same suit the ad interim order of status quo has been granted by the Trial Court, which has been challenged by filling the A.O. Few facts that are necessary to decide, the appeal are narrated herein below.

2. The petitioner is the owner of the land in question by virtue of the conveyance deed dated 31.12.2002 executed between one Ranchod K.Patel and Shantaben K.Patel. The said suit land admeasures 1164.48 sq. mtrs. One more conveyance deed is executed on 31.12.2002 by Ranchod K. Patel and Deviben V.Patel in respect of another piece of land which

admeasures 1312.03 sq.mtrs. The appellant claims to be in possession of the said land. There are certain structures standing on the suit land out of which admittedly two of which appear to be in possession of the original plaintiff. As the plaintiff was apprehending dispossession from the premises at the hands of the present appellant, the plaintiff filed the Civil Suit bearing No. 1542/06 for injunction, seeking to restrain the appellant from interfering the possession of the plaintiff. The Trial Court has passed an Order of status quo and protected the possession of the plaintiff in relation of the constructed premises wherein the plaintiff claims to be residing. The subject matter of suit no. 1542/06 is constructed premises admeasuring 450 sq. feet. In the said suit the plaintiff has not claimed any right in respect of the other part of the suit land. At a later point of time suit no.2849/06 came to be filed challenging a surrender deed executed by the defendant no. 2 in favour of the present appellant, relinquishing the tenancy rights in favour of the appellant in relation to the entire suit land. The plaintiff has made a mention of the surrender deed and he being the witness to the said deed, in suit no. 1542/06. However, no relief in that regard has been claimed in the first suit. In the second suit i.e. 2849/06 the plaintiff/respondent no. 1 moved an application for temporary injunction and with a view to consider the same the trial court found it necessary to have a spot inspection by

the Commissioner and thus by an order dated 13.04.07 the Commissioner was appointed and he had visited the spot and submitted the report in the trial court. The Commissioner has also drawn a map of the site which is annexed to the Commissioner's report. Pending application for temporary injunction, the trial court has directed parties to maintain status quo in regard to the entire suit land. The map submitted by the Commissioner indicates that the appellant had taken steps for construction of plinth by digging three big holes on the suit land which are shown to be admeasuring, at the time of the Commissioner's spot visit, to be as 8 X 9, 8 X 8 and 12 X 10. It is the case of the appellant that by the time the trial court passed an order of status quo, the work of construction of plinth was in progress, on account of which land up to the depth of 15 feet was excavated over the area of 13 X 19 meter.

3. It is, however, the case of the plaintiff that most of the said work has been done after the order of status quo was granted by the trial court. I do not propose to go into any of the issues touching the merit of the matter. I do not also propose to go into the question as to whether the appellant has breached the order passed by the trial court or otherwise. Advocate Dani with great emphasis has contended, with the help of photographs, that are placed on record, that the work of construction of plinth is in half way and if it

is not permitted to be completed at least upto ground level the same would pose a serious threat to the life of human and animals if the area gets filled in with water. He submits that on account of the ensuing monsoon it would be very risky to leave the said construction open. He further submits that without prejudice to the rights of the parties if the Appellant is permitted to carry out the plinth construction up to the ground level, the same would avoid the risk to the human and animals and would not cause any prejudice to the plaintiff as the appellant undertakes not to claim any equity on account of expenditure being incurred for construction of the plinth. It is categorically stated by the Counsel for the appellant that the appellant proposes to construct plinth only up to the ground level at the costs and risk of the appellant and without prejudice to the right of the plaintiff. The said limited prayer for modification of the status quo order is strongly opposed by the learned counsel appearing for the respondent no. 1 plaintiff. It is further contended by the learned counsel for the Appellant that not permitting the appellant to carry out the plinth construction up to ground level and to leave it as it is, which is at half way as is directed by the status quo order, would unnecessarily cause utmost inconvenience and irreparable loss to the appellant which can be avoided by the undertaking given by the appellant referred to herein above and the same would be in the interest of justice. In my view no prejudice

would be caused to the plaintiff/respondent no. 1 if the appellant is permitted to carry out the incomplete plinth work only up to the ground level so as to ensure that there is no loss or inconvenience to any one, more so, when the work is to be performed at the risk and cost of the appellant and without prejudice to the right of plaintiffs which is subject matter of the pending suit. I have deliberately not touched the merits of the matter in any manner as the trial court has yet not addressed itself to the issues arising in the temporary injunction application. However in the facts and circumstances narrated herein above I am modifying the status quo order passed in suit no. 2849/06 to a limited extent. Perusal of the impugned order reveals that the trial court has passed the impugned order of status quo solely because status quo order was passed in the first suit no. 1542/06. In my view the subject matter of both the suits is different. The trial court ought to have appreciated the facts in the present suit independently and without getting influenced by the status quo order passed in the first suit. It is made clear that the order of status quo passed in suit no. 1542/2006 shall continue to operate hence, the following order :

O R D E R

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1. The order passed by the trial court dated 5.5.2007 is modified to the extent that the appellant is permitted to carry out and complete the incomplete work of construction of plinth over an area admesuring 13 X 19 meter, only upto the ground level.

2. The appellant shall not raise any construction above the ground level. Thus, construction of plinth shall be carried out by the appellant at its own cost and risk. The appellant shall not claim any equity on account of having constructed the plinth upto ground level.

3. I direct the appellant to file a separate undertaking under the signature of appellant incorporating all the aforesaid assurances given by the learned counsel to this court. The counsel undertakes, on instructions from Shri Rakesh Jain, Director of the appellant, to furnish the undertaking within one week from today.

(A.P.DESHPANDE J.)